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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Eleventh periodic report of States parties due in 1995

Addendum

Burkina Faso*

[25 September 1996]

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* The present report constitutes the sixth, seventh, eighth, ninth, tenth and eleventh periodic reports of Burkina Faso, due on 17 August 1985, 1987, 1989, 1991, 1993 and 1995 respectively. For the fourth and fifth periodic reports of Burkina Faso and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/105/Add.5 and CERD/C/SR.711.

The information submitted by Burkina Faso in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.30.

Introduction

1. Burkina Faso has not submitted a report since 1984 (CERD/C/105/Add.5). This silence has been due to a number of factors, the most serious being the state of emergency in the country during which human rights were not universally respected. A process begun in 1987 has led to the establishment of a democratic State based on the rule of law and governed by basic legislation: a Constitution, an Organization of the Judiciary Act, etc.

2. This report will therefore serve as a replacement for the six reports that Burkina Faso should have submitted between 18 August 1985 and 18 August 1996. It comprises three major sections:

From the state of emergency to the rule of law;

The rule of law: legislative, judicial, administrative and other measures;

Measures implementing the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

I. FROM THE STATE OF EMERGENCY TO THE RULE OF LAW

3. Since becoming an internationally recognized sovereign State, Burkina Faso, like other African States, has been governed by democratic regimes and regimes with emergency powers. In 1984, when Burkina Faso submitted its last report, the country was in a state of emergency with no basic constitutional legislation and was deprived of freedom of association, assembly and expression. Political groupings were prohibited and the people were required to subscribe to a single ideology. In these circumstances, the argument of force rather than force of argument was used to convince or dissuade. There were also more political prisoners in Burkina Faso than ever before.

4. The beginning of a process of rectification on 15 October 1987 restored hope to a people who had seemed increasingly resigned to their fate. From October 1987, therefore, the authorities committed themselves to restoring a climate of trust for the people of Burkina Faso and reconciling the nation with itself. At the same time, increased emphasis was placed on respect for human rights, the construction of peace and social stability. It was this lengthy process which culminated in multiparty democracy and the gradual establishment of democratic institutions with, first and foremost, the adoption by referendum of the Constitution establishing the Fourth Republic on 2 June 1991.

II. THE RULE OF LAW: LEGISLATIVE, JUDICIAL, ADMINISTRATIVE OR OTHER MEASURES ADOPTED IN THE LIGHT OF THE CONVENTION (ART. 9)

A. Legislative measures

1. The Constitution

5. After the emergency period, during which freedoms had been suspended, Burkina Faso slowly but surely returned to the rule of law, based on the Constitution of 2 June 1991.

6. In its preamble, the Constitution of 2 June 1991 lays out a full programme for the State's future rulers in terms of action against racial discrimination. It commits the people of Burkina Faso to the construction of a State based on the rule of law and guaranteeing the rights of individuals and groups, freedom, security, well-being, development, equality and justice as fundamental values of a pluralist and progressive society free from all forms of prejudice.

7. It commits the people of Burkina Faso to the goal of economic and political integration with the other peoples of Africa with a view to achieving federalist unity and promoting respect for the 1981 African Charter on Human and People's Rights, the 1948 Universal Declaration of Human Rights and international instruments dealing with economic, political, social and cultural issues.

8. The provisions of the Constitution recognize and protect civil, political and economic rights:

Article 1, paragraph 3: "Discrimination of any kind, particularly based on race, ethnicity, region, colour, sex, language, religion, caste, political opinion, wealth and birth, is prohibited."

Article 2: "Slavery, slavery-like practices, inhuman, cruel, degrading and humiliating treatment, physical or moral torture, subjection of children to cruelty and ill-treatment, and all forms of degradation of human beings are prohibited and shall be punishable by law."

Article 7: "Freedom of belief, non-belief, conscience, religious opinion, philosophy, worship, assembly, observance of customary practices, procession and demonstration are guaranteed by the Constitution subject to respect for the law, public policy, public morals and the human person."

Article 13: "Political parties and groupings shall be established freely... They shall conduct their activities freely subject to respect for the law. All political parties shall be equal in terms of their rights and duties. Tribalist, regionalist, denominational or racist parties or political groupings shall not, however, be authorized."

Article 15: "The right to property is guaranteed... It shall not be restricted save in cases of public need established in accordance with due legal procedure."

Article 18: "Education, instruction, training, work, security, social security, housing, leisure, health, maternal and child protection, assistance to elderly or disabled persons and to persons in social need, and artistic and scientific creative expression are social and cultural rights recognized and promoted by the present Constitution."

Article 19.2: "The right to work is recognized as an equal right for all. Discrimination in employment and remuneration based on sex, colour, social origin, ethnicity or political opinion is prohibited by the Constitution. Article 1 of Act No. 11-92/ADP of 22 December 1992 prohibits all discrimination in respect of employment and occupation."

2. Personal and family code

9. Considerable emphasis is placed in this instrument on the prevention of all forms of racial discrimination.

10. In addition to the fact that Burkina Faso nationality is acquired automatically by a child born to Burkina Faso parents, children of unknown parentage born in Burkina Faso or foundlings are considered to be of Burkina Faso nationality. Children of foreigners resident in Burkina Faso may, if they wish, obtain Burkina Faso nationality by declaration. Such children must, however, at the time of making the declaration, have been habitually resident in Burkina Faso for at least five years, be 18 years of age or have obtained the authorization of their father and mother if they are still minors. Children born in Burkina Faso of career diplomatic or consular officials of foreign nationality are also eligible for voluntary acquisition of Burkina Faso nationality subject to the principle of extraterritoriality applicable to such officials and to the legislation of their country of origin.

11. Naturalization is open to foreigners who provide proof of habitual residence in Burkina Faso for 10 years, or 2 years in the case of foreigners born in Burkina Faso or who have rendered major services to the country, for example in the form of products of artistic, scientific or literary talent, a new industry or useful invention, industrial establishments or agricultural enterprises.

12. Any discrimination in marriage based on race, colour, religion, ethnicity, caste, social origin or wealth is prohibited; strict equality exists between the spouses. Opposition to marriage on grounds of race, caste, colour or religion is prohibited. The Personal and Family Code currently in force in Burkina Faso seeks to modernize and standardize the marriage regime by eliminating all forms of discriminatory marriage, particularly forced marriage, the betrothal of young girls and levirate ("formal" marriage with the widow of one's brother).

B. Judicial measures

13. The judicial system, as currently organized and run pursuant to the 1991 Constitution and the organizational instruments, is based on democratic principles and seeks to guarantee collective and individual freedoms and civil, political, economic, social cultural and other rights for all inhabitants of Burkina Faso.

14. Accordingly, articles 3, 4 and 5 of the Constitution stipulate that no one shall be deprived of freedom unless an action is brought against him for acts proscribed and punishable by law, and that no one may be held in custody, deported or exiled except in conformity with the law. All nationals of Burkina Faso and all persons resident in Burkina Faso are protected by law: everyone has the right to have his case heard by an independent and impartial court; an arrested person is presumed innocent until found guilty. The right to a defence, including the right to choose a defence counsel, is guaranteed before all courts. Whatever is not prohibited by law cannot be prevented and no one may be forced to do anything that is not required by law.

15. Criminal law is not retroactive. No one may be tried or punished except on the basis of a law promulgated and published prior to commission of the punishable act. Penalties are personal and individual.

16. Under the 1991 Constitution, the justice system is given the status of a judiciary (art. 124) instead of a mere public service and a two-tier court system is established (art. 126) to safeguard citizens against arbitrary action by judges while at the same time guaranteeing the independence of the judiciary (arts. 129 and 130) vis-à-vis interference from other authorities.

17. The Criminal Code (Act No. 15 AL of 31 August 1959) thus stipulates that ministers, mayors and other administrators who encroach on judicial functions or who improperly exercise jurisdiction over private rights and interests that fall within the competence of the courts, and who, after a complaint is filed by the parties or one of the parties, take a decision on the case although a ruling by the higher authority is still pending, shall be liable to payment of a fine of 25,000 to 180,000 CFA francs.

18. Individuals who suffer arbitrary and undue infringements of their freedoms and civil rights by political or administrative authorities, public officials, ministers or, in general, any person vested with public authority, have the right to institute proceedings before the courts to obtain condemnation of and compensation for the acts of which they were the victims.

19. A public official, agent or employee of an administration who orders or carries out an arbitrary or improper act that is an infringement of the individual freedom or the civil rights of one or more citizens shall be punished by a term of imprisonment.

20. With regard to the safeguarding of citizens against arbitrary acts by the judiciary, the same Act provides for a term of imprisonment for magistrates, judges or public officers who hold an individual in custody or

have him held at a location other than those specified by the Government or the public administration or who bring a citizen before an assize court without formal committal proceedings.

21. In support of this provision, officials responsible for the administrative or judicial police who refuse or omit to refer a complaint by individuals regarding illegal or arbitrary detention to the appropriate authorities shall be sentenced to forced labour and held liable for damages. In addition, warders or keepers at prisons or penitentiaries who admit or detain a prisoner without a warrant or judicial decision shall be deemed guilty of arbitrary detention and liable as such to a term of imprisonment of between six months and two years and to a fine of between 25,000 and 75,000 CFA francs.

C. Administrative measures

22. Article 127 of the 1991 Constitution provided for the establishment of a Supreme Court, the highest court in the land comprising four divisions, including the administrative division responsible for monitoring the legality of administrative acts affecting individuals: the career of State agents and officials, disciplinary measures, administrative acts relating to real estate, etc. The administrative division of the Supreme Court declares such acts null and void where they are irregular or arbitrary. It should be noted in this connection that no dispute between the Administration and individuals based on race, religion or sex has ever been referred to the administrative division.

23. Lastly, the creation of the office of Mediator of Burkina Faso in 1995 should be mentioned as an important innovation. The Mediator, who resembles the ombudsman in some other countries, is required, without distinction or discrimination, to consider complaints from public officials of the State who feel arbitrarily penalized by an act of the Administration.

III. SOME MEASURES GIVING EFFECT TO THE PROVISIONS OF THE CONVENTION

A. Measures for the promotion of women

24. Zatu (presidential decree) No. AN VI-0008/FP/TRAV of 26 October 1998 concerning the general regulations governing the civil service stipulates that all nationals of Burkina Faso shall have equal access without distinction to the civil service. Recruitment is therefore based on strict observance of the law and regulations. The number of women in the civil service has increased from 22 per cent in 1993 to 34 per cent in 1994. In sectoral terms, they represent 57 per cent in education, 14.5 per cent in health, 11 per cent in territorial administration, 3.6 per cent in agriculture and 3.2 per cent in finance.

25. Women account for 52 per cent of the population of Burkina Faso and, in addition to the civil service, the State has undertaken to provide financial support for productive activity by women in rural areas and the informal sector to promote their full socio-economic integration. For example, a

support fund for the gainful employment of women has been set up to grant loans repayable over a period to women in the informal sector (vendors of vegetables, fruit, local drinks or millet beer, craftswomen, dressmakers, caterers, weavers, etc.) and to women's groups.

B. Educational development

26. Educational development is a basic requirement for successful implementation of the Government's development strategy which aims at providing access for all children to primary education. Schooling begins at seven years of age. In 1990/1991, 504,412 pupils were enrolled in primary education, 43,629 in private schools and 460,703 in public schools. The gender-disaggregated data show a predominance of boys: 61.6 per cent compared with 38.4 per cent for girls. In general, the enrolment ratio for girls is considerably lower (23.55 per cent) than for boys (36.14 per cent). As part of its educational development effort, the Government has set itself a target enrolment ratio of 40 per cent for 1996/1997.

27. The disparity between boys and girls in the enrolment ratio at primary level has had an impact on both secondary and higher education. At the beginning of the 1990/1991 academic year, Ouagadougou University enrolled 5,424 students, of whom 76.9 per cent were boys and 23.1 per cent girls. At the same time, 246 foreign students, or 4.53 per cent of the local student population, were enrolled.

28. To sum up, Burkina Faso has always made it a point of honour to abide by the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination so as to preserve the economic and political order. All forms of discrimination are prohibited and outlawed with a view to guaranteeing peace and social stability and building national unity in the interests of harmonious socio-economic and political development. The guarantors of this order are the Constitution and the legislative and statutory enactments.